# Raja Guppal a/l Ramasamy v Sagaran a/l Pakiam

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P–04–85 OF 1997
LAMIN PCA, AHMAD FAIRUZ AND HAIDAR JJCA
27 NOVEMBER 1998

***Civil Procedure*** *— Appeal — Record of appeal — Filing of — Delay — Request of extention of time to file record of appeal — Delay due to non-compliance with Practice Direction No 1 of 1996 — Whether conduct of appellant in not complying with practice direction was acceptable explanation for delay — Whether court should be slow to exercise discretion in granting extension*

The appellant prayed for an order for extension of time to file the record of appeal. It was submitted, inter alia, that the delay was due to non-compliance with Practice Direction No 1 of 1996, which requires the appellant — in the event of not being provided with the notes of evidence within one month from the date the notice of appeal was filed — to apply immediately to the President of the Court of Appeal for an extension of time. In this case, the appellant had instead wrote to the Registrar of the Court of Appeal.

**Held**, dismissing the application:

(1) It was erroneous on the part of the appellant's solicitor to contend the need to have the grounds of judgment in order to prepare the memorandum of appeal for inclusion in the record of appeal when para (5) of Practice Direction No 1 of 1996 allows for the grounds of judgment to be filed as an additional record of appeal without the necessity of filing an application (see p 679G–H).

(2) Practice Direction No 1 of 1996 has been framed to regulate the procedure governing the filing of appeal records. It must be strictly adhered to so that there is a systematic and consistent procedure governing the filing of appeal records. The conduct of the appellant's solicitor in not complying with Practice Direction No 1 of 1996 can hardly be described as an acceptable explanation for the delay (see p 679H–680A). Therefore, the court should be slow to exercise its discretion in granting the extension.

**[Bahasa Malaysia summary**

Perayu telah memohon untuk melanjutkan masa untuk memfailkan rekod rayuan. Adalah dihujahkan, antara lain, bahawa kelewatan adalah disebabkan ketidakpatuhan kepada Arahan Amalan No 1 tahun 1996, yang memerlukan perayu — dalam keadaan di mana tidak dibekalkan dengan nota keterangan dalam masa sebulan dari tarikh notis rayuan difailkan — dengan segera memohon kepada Presiden Mahkamah Rayuan untuk perlanjutan masa. Sebaliknya dalam kes ini, perayu telah menulis kepada Pendaftar Mahkamah

Rayuan. A

**Diputuskan**, menolak permohonan:

(1) Adalah suatu kesilapan di pihak peguam perayu untuk berhujah mengenai keperluan untuk mendapatkan alasan-alasan penghakiman untuk dimasukkan ke dalam rekod rayuan B sedangkan perenggan (5) Arahan Amalan No 1 tahun 1996 membenarkan alasan-alasan penghakiman untuk difailkan sebagai rekod rayuan tambahan tanpa keperluan untuk memfailkan suatu permohonan (lihat ms 679G–H).

(2) Arahan Amalan No 1 tahun 1996 telah digubal untuk mengawal prosedur memfailkan rekod-rekod rayuan. Ia mestilah diikuti C dengan ketat supaya terdapat prosedur yang sistematik dan konsisten bagi pemfailan rekod-rekod rayuan. Kelakuan peguam perayu yang tidak mematuhi Arahan Amalan No 1 tahun 1996 tidak boleh dikatakan sebagai penjelasan yang boleh diterima untuk kelewatan tersebut (lihat ms 679H–680A). Oleh itu, D mahkamah sepatutnya tidak terburu-buru dalam melaksanakan budi bicara membenarkan perlanjutan tersebut.

**Notes**

For cases on filing of record of appeal, see 2(1) *Mallal's Digest* (4th Ed, E 1998 Reissue) paras 873–882.

**Cases referred to**

*Ling Siok Seng v Ting Sieh Chung* [1998] 4 CLJ 169 (refd)
*Ng Yit Seng & Anor v Syarikat Jiwa Mentakab Sdn Bhd & Ors* [1981] F 2 MLJ 194 (refd)
*Pearson v Chen Chien Wen Edwin* [1991] 3 MLJ 208 (refd)
*Soh Keng Hian v American International Assurance Co Ltd* [1996] 1 MLJ 191 (refd)
*Yeo Yoo Teik v Jemaah Pengadilan Sewa Pulau Pinang & Anor* [1996] 2 MLJ 54 (refd) G

**Legislation referred to**

Rules of the Court of Appeal 1994 r 18(7)
Practice Direction No 1 of 1996 paras (1), (2), (3), (5) H

*Sunita Kaur Sandhu* (*Ajmer, Sandhu & Ong*) for the appellant.
*Brinjnandan Singh Bhar* (*Brinjnandan Singh Bhar & Co*) for the respondent.

**Haidar JCA** (delivering judgment of the court): In this application, the appellant prayed for an order for extension of time for him to file the record I of appeal pursuant to r 18(7) of the Rules of the Court of Appeal 1994 ('the Rules') which reads:

> The memorandum and copies above referred to, which together shall be

called the record of appeal, shall be filed at the Registry within six weeks after the entry of the appeal or within such further time as the Court may allow.

In support of the application, the solicitor for the appellant filed an affidavit setting out the grounds for the delay. In essence, the delay is grounded on:

(1) non-compliance with Practice Direction No 1 of 1996 dated 5 February 1996 issued by the President of the Court of Appeal; and

(2) would not prejudice the respondent.

The respondent objected to the application.

*Non-compliance with Practice Direction No 1 of 1996*

On 13 October 1997, the learned High Court judge dismissed the appeal of the appellant against the judgment of the lower court on liability and quantum. It was a running down action.

On 7 November 1997, the appellant filed a notice of appeal against the decision of the learned High Court judge.

On 10 December 1997, the appellant was provided with the notes of evidence but not the grounds of judgment of the learned High Court judge.

As the appellant was not provided with the notes of evidence within one month from the date the notice of appeal was filed after making the necessary application for the same, the appellant should immediately, in accordance with para (1) of Practice Direction No 1 of 1996, apply to the President of the Court of Appeal for extension of time to file the record of appeal.

Instead of writing to the President of the Court of Appeal for extension of time as stipulated under para (1) of Practice Direction No 1 of 1996, the appellant's solicitor wrote a letter dated 4 December 1996 (exh 'SKS-2') to the Registrar of the Court of Appeal for extension of time to file the record of appeal. Quite naturally, there was no response from the Registrar of the Court of Appeal to the letter of 4 December 1997 from the appellant's solicitor.

The appellant's solicitor subsequently wrote a letter dated 16 December 1997 to the President of the Court of Appeal applying for extension of time to file the record of appeal. This letter itself had not complied with paras (2) and (3) of Practice Direction No 1 of 1996. Be that as it may, the appellant's solicitor was advised to comply with Practice Direction No 1 of 1996 (see exh 'SKS-3'). It was clearly erroneous on the part of the appellant's solicitor to contend the need to have the grounds of judgment in order to prepare the memorandum of appeal for inclusion in the record of appeal when para (5) of Practice Direction No 1 of 1996 clearly allows for the grounds of judgment to be filed as an additional record of appeal without the necessity of filing an application. As a result, there was a delay in filing the record of appeal.

Practice Direction No 1 of 1996 has been framed to regulate the procedure governing the filing of appeal records. It must be strictly adhered to so that there is a systematic and consistent procedure governing the filing of appeal records. It was so emphasized by this court in *Yeo Yoo Teik v*

*Jemaah Pengadilan Sewa Pulau Pinang & Anor* [1996] 2 ML.J 54 and quoted with approval recently by this court in another case, *Ling Siok Seng v Ting Sieh Chung* [1998] 4 CLJ 169. The conduct of the appellant's solicitor in not complying with Practice Direction No 1 of 1996 can hardly be described as an acceptable explanation for the delay.

As stated by this court in *Soh Keng Hian v American International Assurance Co Ltd* [1996] 1 MLJ 191 at p 194, the mistake of a solicitor is a factor which the court may now take into account when deciding whether to grant an extension of time. Though *Soh Keng Hian*'s case relates to an extension of time to file a notice of appeal, we are of the view that the same should apply to application for extension of time to file record of appeal as it relates to the exercise of the discretionary power of the court.

On this ground alone, we should be slow to exercise our discretion in granting the extension.

*Would not prejudice the respondent*

Quite apart from the statement that if the application is allowed, it would not prejudice the respondent, the appellant's solicitor did not allude to some facts or law in the affidavit in support so as to show at least an arguable case (see *Yeo Yoo Teik v Jemaah Pengadilan Sewa, Pulau Pinang & Anor* at p 56, and *Pearson v Chen Chien Wen Edwin* [1991] 3 MLJ 208).

No doubt we were advised that at the date of the hearing of this application, the record of appeal had been filed on 21 January 1998 and served on the respondent on 23 January 1998, for the reasons stated, we were of the view that there were no sufficient good grounds for us to exercise our discretion to extend time.

The application was dismissed with costs.

By way of postscript, we quote, 'it is time the litigants and their legal advisers realize and appreciate that rules are made to be observed and complied with and not flouted or wantonly ignored ad libitum', per Abdoolcader J, in dealing with the failure of the appellant to comply with the statutory provision requiring service of the copy of the record of appeal on the respondents or their solicitors in the Federal Court case of *Ng Yit Seng & Anor v Syarikat Jiwa Mentakab Sdn Bhd & Ors* [1981] 2 MLJ 194 at p 195.

*Application dismissed with costs.*

Reported by Loo Lai Mee